HONORABLE FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REALNETWORKS, INC., a Washington corporation,

Plaintiff,

v.

MLB ADVANCED MEDIA, L.P., a Delaware limited partnership,

Defendant.

Case No. CV04-0511FDB

PLAINTIFF'S ANSWER TO COUNTERCLAIMS

COMES NOW Plaintiff RealNetworks, Inc. ("RealNetworks"), by and through its attorneys Ralph H. Palumbo, Lynn M. Engel, Denise L. Ashbaugh and Summit Law Group PLLC, and answers the allegations asserted by Defendant MLB Advanced Media LP ("MLBAM") in its Answer to Complaint, Affirmative Defenses and Counterclaims as follows:

I. ANSWERS TO MBLAM'S ALLEGATIONS

1. RealNetworks admits that the Court has subject matter jurisdiction.

2. RealNetworks, on information and belief, admits the allegations of Paragraph 2.

3. RealNetworks admits the allegations of Paragraph 3.

4. RealNetworks states that it does not have sufficient knowledge to admit or deny the allegations in Paragraph 4 and therefore denies the same.

5. RealNetworks states that it does not have sufficient knowledge to admit or deny the allegations in Paragraph 5 and therefore denies the same.

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6. RealNetworks states that it does not have sufficient knowledge to admit or deny the allegations in Paragraph 6 and therefore denies the same.

7. RealNetworks states that it does not have sufficient knowledge to admit or deny the allegations in Paragraph 7 and therefore denies the same.

8. RealNetworks states that it does not have sufficient knowledge to admit or deny the allegations in Paragraph 8 and therefore denies the same.

9. Answering Paragraph 9, RealNetworks admits that it had certain promotional, advertising, content, sales, pricing and media formatting rights pursuant to its 2001 Streaming Media Services Agreement with MLBAM, and amendments thereto, and that it paid a sum amount for all benefits of the 2001 Streaming Media Services Agreement. RealNetworks denies the remaining allegations of said Paragraph 9.

10. RealNetworks admits the allegations of Paragraph 10.

11. Answering Paragraph 11, RealNetworks admits that in order to watch and/or listen to certain live retransmissions of MLB game television broadcast or MLB game radio broadcast via the Internet, before February 7, 2004, a consumer was required to purchase a subscription on the MLB.com or RealNetworks website. RealNetworks also admits that RealOne SuperPass subscription service was offered on RealNetworks' website and included access to audio webcasts of live and archived MLB games. RealNetworks denies the remaining allegations of said Paragraph 11.

12. RealNetworks, on information and belief, admits the allegations of Paragraph 12.

13. Answering Paragraph 13, RealNetworks admits that it considered it beneficial to enter into the Streaming Media Services Agreement, and amendments thereto, with MLBAM. RealNetworks also admits that during the term of the Streaming Media Services Agreement, and amendments thereto, RealNetworks promoted the availability of a premium player that consumers could purchase from RealNetworks. RealNetworks denies the remaining allegations of said Paragraph 13.

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14. Answering Paragraph 14, RealNetworks admits, pursuant to its Streaming Media Services Agreement, and amendments thereto, that it promoted the availability of MLB games in its subscription services. RealNetworks denies the remaining allegations of said Paragraph 14.

15. RealNetworks admits the allegations of Paragraph 15.

16. Answering Paragraph 16, RealNetworks admits that numerous people subscribed to the RealOne SuperPass during the term of the Streaming Media Services Agreement, and amendments, thereto, and that certain subscribers agreed to have their subscription fee automatically charged to their credit cards each month by RealNetworks until they notified RealNetworks of their desire to terminate the subscription. RealNetworks does not have sufficient knowledge to admit or deny the remaining allegations of said Paragraph 16 and therefore denies the same.

17. Answering Paragraph 17, RealNetworks admits that the Streaming Media Services Agreement, including its amendments, concluded on February 7, 2004. RealNetworks also admits that after February 7, 2004, RealNetworks did not have the right to have MLB content exclusively formatted in the RealNetworks' format. RealNetworks denies the remaining allegations of said Paragraph 17.

18. Answering Paragraph 18, RealNetworks asserts the terms of the parties' 2004-05 Contract between RealNetworks and MLBAM speaks for itself. RealNetworks denies any allegations of Paragraph 18 that are different from or additional to the terms of the 2004-05 Contract.

19. Answering Paragraph 19, RealNetworks does not have sufficient information to form a belief as to whether the change (gain or loss) of any specific content, standing alone, is likely to affect the number of persons who pay a subscription fee for RealNetworks' subscription services. RealNetworks denies the remaining allegations of said Paragraph 19.

20. RealNetworks denies the allegations of Paragraph 20.

21. RealNetworks denies the allegations of Paragraph 21.

22. RealNetworks denies the allegations of Paragraph 22.

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23. Answering Paragraph 23, RealNetworks admits that it is careful in preparing and publishing its advertisements for services. RealNetworks denies the remaining allegations of said Paragraph 23.

24. Answering Paragraph 24, RealNetworks admits that it has used a picture on its website of people playing baseball that does not contain any MLB logos, identify any MLB players, or depict any MLB location. RealNetworks denies the remaining allegations of said Paragraph 24.

25. Answering Paragraph 25, RealNetworks admits that it removed the picture of people playing baseball from its website in the ordinary course of business. RealNetworks denies the remaining allegations of said Paragraph 25.

26. Answering Paragraph 26, RealNetworks admits that it used a MLB advertisement on its Japanese website, which was placed on the website at the request of MLBAM. RealNetworks denies the remaining allegations of said Paragraph 26.

27. RealNetworks denies the allegations of Paragraph 27.

28. RealNetworks denies the allegations of Paragraph 28.

29. RealNetworks denies the allegations of Paragraph 29.

30. RealNetworks does not have sufficient knowledge to admit or deny the allegations of Paragraph 30 and therefore denies the same.

31. RealNetworks admits that "Real Rhapsody" is a subscription service under which RealNetworks charges fees to users to access music content. Because a consumer's experience when visiting the MLB.com website is highly dependent on the actions of MLBAM, RealNetworks does not have sufficient knowledge to admit or deny the remaining allegations of Paragraph 31 and therefore denies the same.

32. Because a consumer's experience when visiting the MLB.com website is highly dependent on the actions of MLBAM, RealNetworks does not have sufficient knowledge to admit or deny the allegations of Paragraph 32 and therefore denies the same.

33. RealNetworks denies the allegations of Paragraph 33.

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34. RealNetworks denies the allegations of Paragraph 34.

35. RealNetworks realleges and incorporates by reference its answers in Paragraphs 1 through 35.

36. RealNetworks denies the allegations of Paragraph 36.

37. RealNetworks denies the allegations of Paragraph 37.

38. RealNetworks denies the allegations of Paragraph 38.

39. RealNetworks denies the allegations of Paragraph 39.

40. RealNetworks denies the allegations of Paragraph 40.

41. RealNetworks realleges and incorporates by reference its answers to Paragraphs 1 through 40.

42. RealNetworks denies the allegations of Paragraph 42.

43. RealNetworks denies the allegations of Paragraph 43.

44. RealNetworks denies the allegations of Paragraph 44.

45. RealNetworks denies the allegations of Paragraph 45.

46. RealNetworks denies the allegations of Paragraph 46.

47. RealNetworks realleges and incorporates by reference its answers to Paragraphs 1 through 46.

48. RealNetworks does not have sufficient knowledge to admit or deny the allegations of Paragraph 48 and therefore denies the same.

49. RealNetworks denies the allegations of Paragraph 49.

50. RealNetworks denies the allegations of Paragraph 50.

51. RealNetworks denies the allegations of Paragraph 51.

52. RealNetworks denies the allegations of Paragraph 52.

53. RealNetworks denies the allegations of Paragraph 53.

54. RealNetworks denies the allegations of Paragraph 54.

55. RealNetworks denies the allegations of Paragraph 55.

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56. RealNetworks realleges and incorporates by reference its answers to Paragraphs 1 through 55.

57. RealNetworks does not have sufficient knowledge to admit or deny the allegations of Paragraph 57 and therefore denies the same.

58. RealNetworks denies the allegations of Paragraph 58.

59. RealNetworks denies the allegations of Paragraph 59.

60. RealNetworks denies the allegations of Paragraph 60.

61. RealNetworks denies the allegations of Paragraph 61.

62. RealNetworks denies the allegations of Paragraph 62.

63. RealNetworks denies the allegations of Paragraph 63.

64. RealNetworks denies the allegations of Paragraph 64.

65. RealNetworks realleges and incorporates by reference its answers to Paragraphs 1 through 64.

66. RealNetworks denies the allegations of Paragraph 66.

67. RealNetworks denies the allegations of Paragraph 67.

68. RealNetworks denies the allegations of Paragraph 68.

69. RealNetworks denies the allegations of Paragraph 69.

70. Answering MLBAM's Demand for Relief, RealNetworks admits that the Court should determine the respective rights and obligations of RealNetworks and MLBAM under the 2004-05 Contract. RealNetworks denies that MLBAM is entitled to the relief it requests.

II. AFFIRMATIVE DEFENSES

71. MLBAM has failed to state claim upon which relief may be granted.

72. MLBAM's counterclaims are barred by the doctrines of estoppel and unclean hands.

III. ADDITIONAL CAUSES OF ACTION

73. MLBAM's counterclaims are not supported by the facts as known, or should reasonably be known, to MLBAM.

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74. MLBAM's counterclaims are not supported by existing law, or a reasonable extension of existing law.

75. MLBAM's counterclaims are without merit, and, upon information and belief, the counterclaims are asserted in bad faith.

76. RealNetworks is entitled to recover its costs of litigation and reasonable attorneys' fees incurred to defend MLBAM's counterclaims.

IV. PRAYER FOR RELIEF

WHEREFORE, having fully answered the allegations contained in MLBAM's Answer to Complaint, Affirmative Defenses and Counterclaims, RealNetworks requests that the Court enter judgment against MLBAM for the following

1. For the dismissal with prejudice of each and every claim filed by MLBAM;
2. For an award of RealNetworks' costs of litigation and RealNetworks' reasonable attorneys' fees incurred to defend MLBAM's counterclaims; and
3. For such other and further relief as the Court deems just and equitable.

DATED this 19th day of April, 2004.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

/s/ Ralph H. Palumbo
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CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of April, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Laurene E. Somerville, James L. Magee, G. Michael Halfenger and Mary K. Braza, attorneys for Defendant MLB Advanced Media LP.

/s/ Ralph H. Palumbo

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